

MEMORANDUM OF LAW

DATE: June 5, 1990

TO: Citizen's Equal Opportunity Commission

FROM: City Attorney

SUBJECT: On-Site Visits to Hartson

At the May meeting, the Citizen's Equal Opportunity Commission ("Commission") expressed a concern about the equal opportunity statistics submitted by Hartson Medical Services. The perception is that the statistics are either misleading or inaccurate. Based on this perception, the Commission has requested an opinion on the appropriateness of an on-site visit by Commission members to the Hartson's office.

The Commission, as set up by ordinance and adopted by council, is an advisory body. As an advisory body, the Commission is granted no power to take such actions on its own. San Diego Municipal Code section 26.16 reads, in pertinent part:

The Board shall:

1. Monitor and/or evaluate the Equal Opportunity Program of the City as it exists and as it may be amended from time to time by the City Council.
2. Advise on a continuing basis and make recommendations regarding the Program, as are deemed appropriate and/or necessary, to the Mayor, City Council, Civil Service Commission, Manager and other agencies and appropriate authority of City government.
3. Submit written quarterly reports which evaluate the progress of the City and its agencies for review and acceptance by the Rules Committee and Council. Submittal should coincide with quarterly submittals by the City Manager, Civil Service Commission, non-managerial departments and agencies.
4. In coordination with City Manager, Civil Service Commission, non-managerial departments and agencies, assist in the recruitment of competent minorities, women and handicapped to compete for available City positions, particularly in specific classes and occupations which reflect

underrepresentation.

5. Promote the City of San Diego as an Equal Opportunity Employer of individuals and firms desiring to contract with the City in order to build confidence and goodwill between the City and all citizens.

6. Meet regularly with the staff of the City and its agencies to carry out its responsibilities (emphasis added).

The terms of the section mandate that the Commission act through the manager's office. Additionally, San Diego City Charter section 43 provides:

Section 43. Advisory Boards and Committees

(a) The City Council may by ordinance create and establish advisory boards. Such boards shall be advisory to the Mayor, Council or City Manager as may be designated by ordinance. All members of such boards shall be appointed by the Mayor with Council confirmation, and the terms of office of such members may extend beyond the elective term of the appointing Mayor. The members of such boards shall serve without compensation and it shall be their duty to consult and advise with the Mayor, Council or City Manager, as the case may be, but not to direct the conduct of any Department or Division. Members of such advisory boards shall be limited to a maximum of eight (8) consecutive years in office and an interval of four (4) years must pass before such persons can be reappointed (emphasis added).

Thus, the appropriate action for the Commission to take in the present situation is to advise the manager's office of its

concerns. The manager can then act to investigate the situation. The manager may obtain additional statistics or make an on-site visit to personally determine if the previously provided statistics are accurate.

It is important to remember that Hartson is a private firm which merely contracts with the City. The contractual relationship provides the City with no legal basis upon which to base its request to examine Hartson's personnel records. Voluntary cooperation is essential to ensure the success of the

City's equal opportunity goals in the private sector.

If you have any further questions regarding this issue,
please feel free to contact me.

JOHN W. WITT, City Attorney

By

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